UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GOTTLIEB DEVELOPMENT LLC,

Plaintiff,

v.

PARAMOUNT PICTURES CORPORATION,

Defendant.

08 CV 02416 (DC)

DECLARATION OF ELEANOR M. LACKMAN IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

ELEANOR M. LACKMAN declares as follows:

1. I am an attorney admitted to practice before this Court. I am associated with Arnold & Porter LLP, counsel for defendant Paramount Pictures Corporation, and I submit this declaration in support of defendant's Motion to Dismiss the Complaint in this action.

2. Attached hereto as Exhibit A is a true and correct copy of the Complaint filed in this action.

3. Per the Court's instruction at the hearing held June 17, 2008, plaintiff's counsel provided me with deposit specimens submitted to the Copyright Office in conjunction with the works registered as Reg. No. VA 396-150, titled "Silver Slugger pinball machine backglass design," and Reg. No. VAu 176-502, titled "Playfield parts layout."

4. Attached hereto as Exhibit B is a true and correct copy of the deposit specimen provided to me by plaintiff's counsel for the backglass design, Reg. No. VA 396-150.

5. Attached hereto as Exhibit C is a true and correct copy of the deposit specimen provided to me by plaintiff's counsel for the playfield parts layout, Reg. No. VAu 176-502.

6. Attached hereto as Exhibit D is a true and correct copy of the registration

certificate for the trademark GOTTLIEB (stylized and/or with design), Reg. No. 1,403,592, which was obtained from the U.S. Patent and Trademark Office Trademark Document Retrieval database.

7. Attached hereto as Exhibit E is a DVD containing a true and correct copy of the motion picture entitled "What Women Want."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
July 11, 2008

ELEANOR M. LACKMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----------------------------------X ECF CASE
GOTTLIEB DEVELOPMENT LLC,

Plaintiff, 08 CV 02416 (DC)

-against-

PARAMOUNT PICTURES CORPORATION,

Defendant.
-----------------------------------X

COMPLAINT

Plaintiff, by its attorney Gabriel Fischbarg, Esq., as and for its complaint against the defendant herein, hereby respectfully alleges the following:

1. Plaintiff Gottlieb Development LLC is a New York limited liability company with a principal place of business is in Pelham Manor, New York.

2. Upon information and belief, Defendant Paramount Pictures Corporation is a Delaware Corporation with a principal place of business in Los Angeles, California.

3. The causes and separate counts set forth hereinbelow arise under the Copyright Act, Title 17 U.S.C. 101, et seq. and Trademark Act, Title 15 U.S.C. 1501, et seq. as well as the common law of this state, and jurisdiction and venue are founded upon Title 15 U.S.C. 1051 et seq., Title 28 U.S.C. 1331, 1338, 1391(b), 2201 and 2202. Venue is proper in this District.

AS AND FOR A FIRST CLAIM FOR COPYRIGHT INFRINGEMENT

4. In or around 1990, Premier Technology, an Illinois general partnership, created original designs under the Copyright Act of 1976 for (1) the backglass, (1) the playfield and (3) the layout of the playfield parts for a pinball machine game known as "Silver Slugger" (the "Designs"). The Designs are shown in Exhibit A hereto. Premier Technology received copyright registrations VA 396-150 dated 3/29/90, VA 396-843 dated 3/29/90 and VAu 176-502 dated 3/27/90 for the Designs. On April 1, 1998, Premier Technology assigned to third party Gottlieb Development L.L.C. (an Illinois LLC) in writing all right, title and interest in and to the respective copyrights pertaining to the Designs. Said assignment was recorded on May 26, 1998 at volume 3416, page 421 of the U.S. Copyright Office records. In August, 1998, plaintiff was assigned all of third party Gottlieb Development L.L.C.'s rights in the copyrights at issue pursuant to a merger agreement with said third party.

5. The defendant has obtained access to plaintiff's Designs. The defendant has infringed said copyrights by utilizing the Designs in a film entitled "What Women Want" and distributing and selling the film worldwide since 2000 in movie theatres, on DVDs, on VHS tapes, and on television, among other media.

6. Defendant has performed each of the acts referred to in the preceding paragraphs without permission, consent or authority of the plaintiff and are therefore violating the copyrights of the plaintiff in the said designs. Plaintiff first learned of defendant's infringing use of the Designs in April, 2007 when one of plaintiff's managers watched the film "What Women Want" on television and saw defendant's use of the Designs in the film.

7. Pursuant to 17 U.S.C. 505, the plaintiff is entitled to recover attorneys' fees and costs incurred in bringing this action.

AS AND FOR A SECOND CLAIM FOR VIOLATION OF 15 U.S.C.1125(a)

8. Plaintiff hereby realleges, as if fully set forth, the allegations of Paragraphs 1 through 7 herein.

9. In or about February, 1985, Premier Technologies adopted and applied and used the trademark "Gottlieb" in interstate commerce on and for the purpose or identifying various items and to distinguish them from the goods of others. On July 29, 1986, Premier Technologies received a U.S. trademark registration for the trademark "Gottlieb" with registration number 1403592. In approximately April, 1998, Premier Technologies assigned all right, title and interest in and to the trademark "Gottlieb" to third party Gottlieb Development, L.L.C. (an Illinois LLC) in writing which was recorded at the

U.S. Patent and Trademark Office. In August, 1998, plaintiff was assigned all of third party Gottlieb Development L.L.C.'s rights in the trademark at issue pursuant to a merger agreement with said third party.

10. Continuously since 1985, the owner of the trademark "Gottlieb" has used the said trademark to identify its goods and to distinguish them from those of others by, among other things, prominently displaying the said trademark in advertising and promotional material and on items produced and sold by the trademark's owner nationwide.

11. As a result of the foregoing, the said trademark has developed and now possesses a secondary and distinctive meaning to purchasers and users of items containing such trademark.

12. The defendant has produced, sold and/or distributed the film "What Women Women" in this District and worldwide utilizing the plaintiff's trademark for approximately 3 minutes within the film and has sold and distributed and will continue to sell and distribute such film in this District and throughout the country.

13. The use of said trademark by the defendant is without the permission or authority of plaintiff and said use by the defendant is likely to cause confusion, to cause mistake and to deceive.

14. The unauthorized use of such trademark is likely to create confusion and/or misunderstanding by the purchasers and viewers of plaintiff’s film as to the source and sponsorship of plaintiff’s merchandise.

15. The defendant is selling the film and utilizing plaintiff’s trademark without the permission or agreement of the plaintiff and has not obtained any license to distribute or utilize the same.

16. Upon information and belief, the defendant has been transacting and continues to transact business in this state and elsewhere in interstate commerce, and has been and continues to infringe the rights of plaintiff in the said trademark in this state and elsewhere in interstate commerce, and regularly has been and now does business and solicits business and derives substantial revenue from goods sold, used and consumed in this state and elsewhere in interstate commerce, including said film which infringes the rights of plaintiff as aforesaid. The defendant expected or should have reasonably expected its acts including the aforementioned acts and those set forth hereinbelow to have consequence in this state.

17. Upon information and belief, the defendant has and at all times relevant to the acts set forth hereinabove had actual and constructive knowledge of the rights of plaintiff, but has proceeded in complete disregard thereof.

18. Plaintiff expects that unless the defendant is restrained and enjoined from selling its film, its conduct will deprive plaintiff of the income it is entitled to earn from the exploitation of the trademark described above. Deprivation of that income will cause plaintiff to suffer a loss which is incalculable.

19. The use of the said trademark as aforesaid by the defendant as aforesaid is a false description and representation that plaintiff's goods are made by, sponsored by, or otherwise affiliated with defendant or that defendant received authorization from plaintiff to use the trademark. Said acts are in violation of 15 U.S.C. 1125(a) in that defendant is using in connection with goods a false designation of origin and false or misleading description of fact, which is likely to cause confusion or to deceive as to affiliation, connection or association, or as to sponsorship or approval, and has caused such goods to enter into or affect interstate commerce. Plaintiff believes that it is and is likely to be respectively damaged by such false description and representation by reason of the likelihood that purchasers or viewers of defendant's film will be confused as to the true source, sponsorship or affiliation of plaintiff's goods.

THIRD CLAIM FOR RELIEF (Common Law Unfair Competition)

20. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 19 hereof.

21. By commercially exploiting and distributing the Designs and trademark "Gottlieb" shown in Exhibit A hereto and deliberately copying, reproducing and/or marketing Plaintiff's respective copyrights and trademarks -- all without the consent or authorization of Plaintiff -- Defendant has unfairly competed with Plaintiff, in violation of common law of the State of New York.

22. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial, but believed to be in excess of $75,000.

FOURTH CLAIM FOR RELIEF (Unjust Enrichment)

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 22 hereof.

24. By commercially exploiting and distributing the infringing items and deliberately copying, reproducing and/or marketing Plaintiff's copyrighted designs and trademarks -- all without the consent or authorization of plaintiff -- Defendant have been unjustly enriched at the expense of Plaintiff.

25. By reason of the foregoing, plaintiff has been damaged in an amount to be determined at trial, but believed to be in excess of $75,000.

FIFTH CLAIM FOR RELIEF (New York Statutory Violations)

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 25 hereof.

27. By virtue of Defendant's acts, here and above pleaded, Defendant has caused and there exists a likelihood of injury to plaintiff's business reputation.

28. Said acts of Defendant are in violation of Section 349 of General Business Law of the State of New York as acts are in violation of the unfair trade practices and consumer protection acts of New York State.

29. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial, but believed to be in excess of $75,000.

SIXTH CLAIM FOR RELIEF -(Injunctive Relief)

30. Plaintiff repeats and realleges the allegations in paragraphs 1 through 29 hereof.

31. By reason of the foregoing acts of copyright infringement, false designation of origin and unfair competition, Plaintiffs has been and will be irreparably injured and cannot be fully, adequately or readily compensated by money damages.

32. Plaintiff has no adequate remedy at law and requires injunctive relief.

JURY DEMAND

33. Plaintiff requests a trial by jury.

WHEREFORE, plaintiff prays:

1. That defendant, its respective agents, servants, employees, officers, attorneys, successors and assigns and all persons acting under a defendant or on a defendant's behalf, be enjoined pendente lite and permanently from:

(a) directly or indirectly infringing any of plaintiff's respective copyrights and trademarks described above;

(b) manufacturing, distributing, selling, offering for sale or holding for sale any items utilizing said designs and trademarks or any colorable variation thereof;

(c) representing that any article of merchandise manufactured, distributed, sold, held for sale or advertised by defendant is sponsored or authorized by the plaintiff; and

(d) aiding, abetting, encouraging or inducing another to do any of the acts herein enjoined.

2. That defendant be required to account and pay over to the plaintiff all gains, profits and advantages derived by them from its copyright and trademark infringement, the unfair competition with the plaintiff, the violation of Section 43(a) of the Lanham Act and the violation of NY General Business Law Section 349 and, in addition, the damages which plaintiff has sustained by reason of the defendant's said acts.

3. That because of the willful nature of said infringement, the Court enter judgment for $150,000.00 (under 17 U.S.C. 504 of the Copyright Act) for each copyright that has been infringed and for three times the amount of said damages (under the Lanham Act).

4. That the defendant be required to pay to the plaintiff the costs of this action, and reasonable attorneys' fees to be allowed by the Court.

5. That the defendant be required to deliver up to the plaintiff all merchandise and material in its possession or under their control which is subject to the injunctive order of this Court, including, without limitation, film positives and negatives, and any other materials for making the same, for the purpose of destruction or other disposition.

6. That the defendant be required to withdraw from their customers, retailers and all others all of the material specified in Paragraphs 1(a) through 1(d) hereof, including offering reimbursement for same, and delivering up the same to the plaintiff for destruction or disposition.

7. That plaintiff have such other and further relief as the Court deems just and proper.

Dated: March 7, 2008
New York, New York

/s/
Gabriel Fischbarg, Esq. (GF 5456)
239 East 79th Street, Suite 4-A
New York, NY 10075
Tel: 212-401-4906
Fax: 212-401-4949
Attorney for plaintiff

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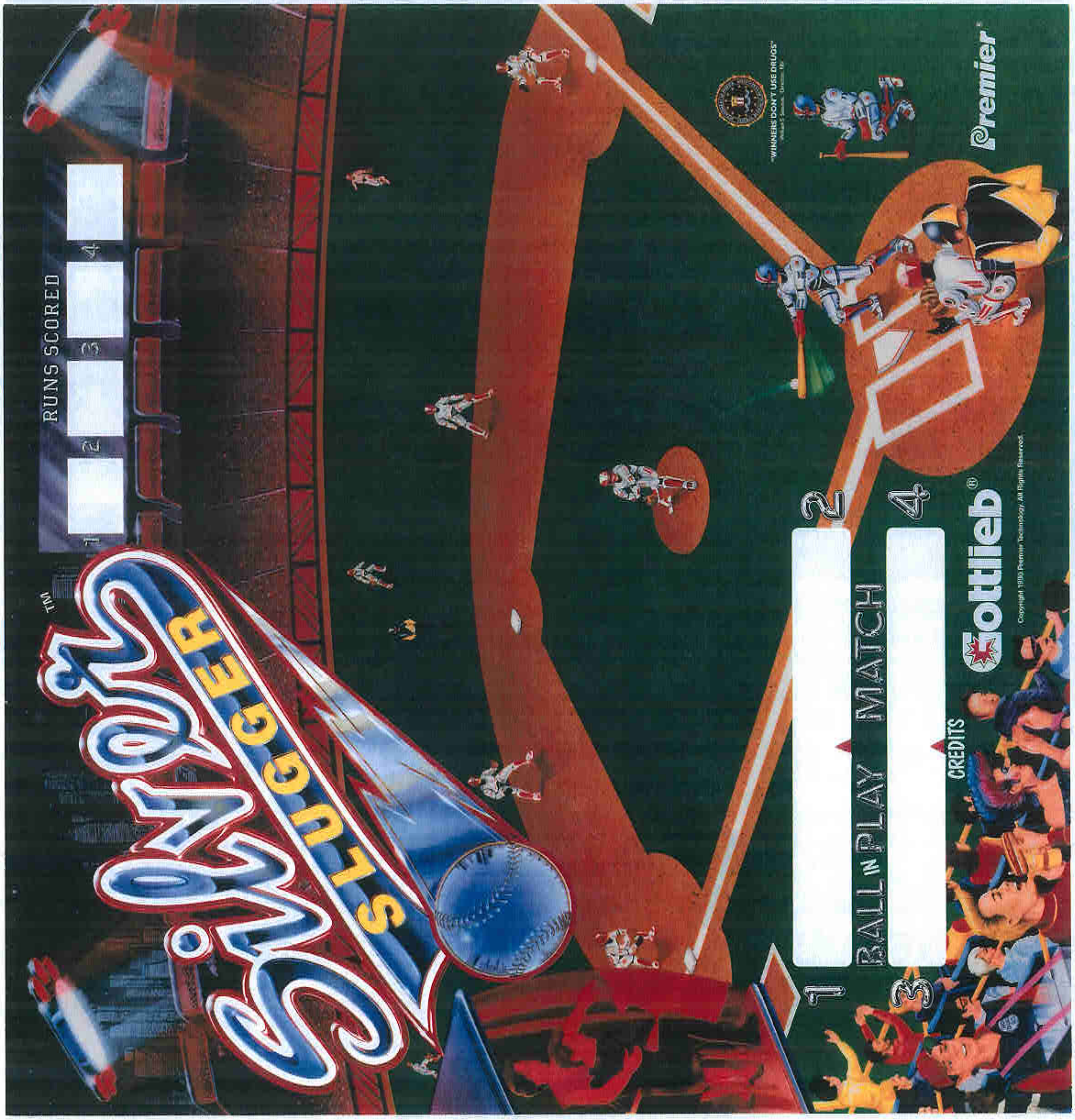
EXHIBIT A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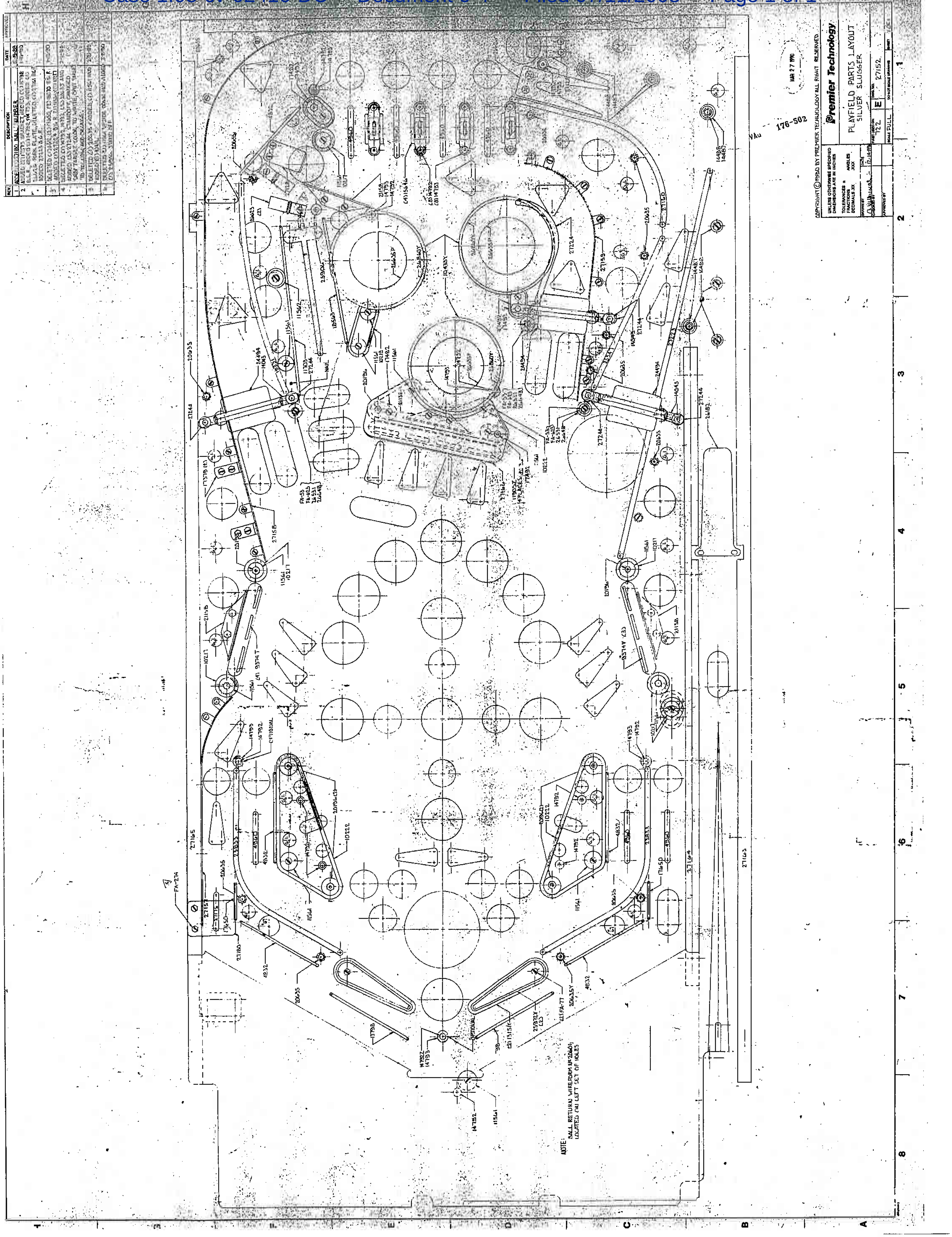

Premier Technology
PLAYFIELD PARTS LAYOUT
SILVER SLUGGER
27152
VAu - 176-502
NOTE: BALL RETURN WIREFORM LOCATED ON LEFT SET OF HOLES

Int. Cl.: 28

Prior U.S. Cls.: 22 and 23

Reg. No. 1,403,592
Registered July 29, 1986

United States Patent and Trademark Office

TRADEMARK
SUPPLEMENTAL REGISTER

Gottlieb

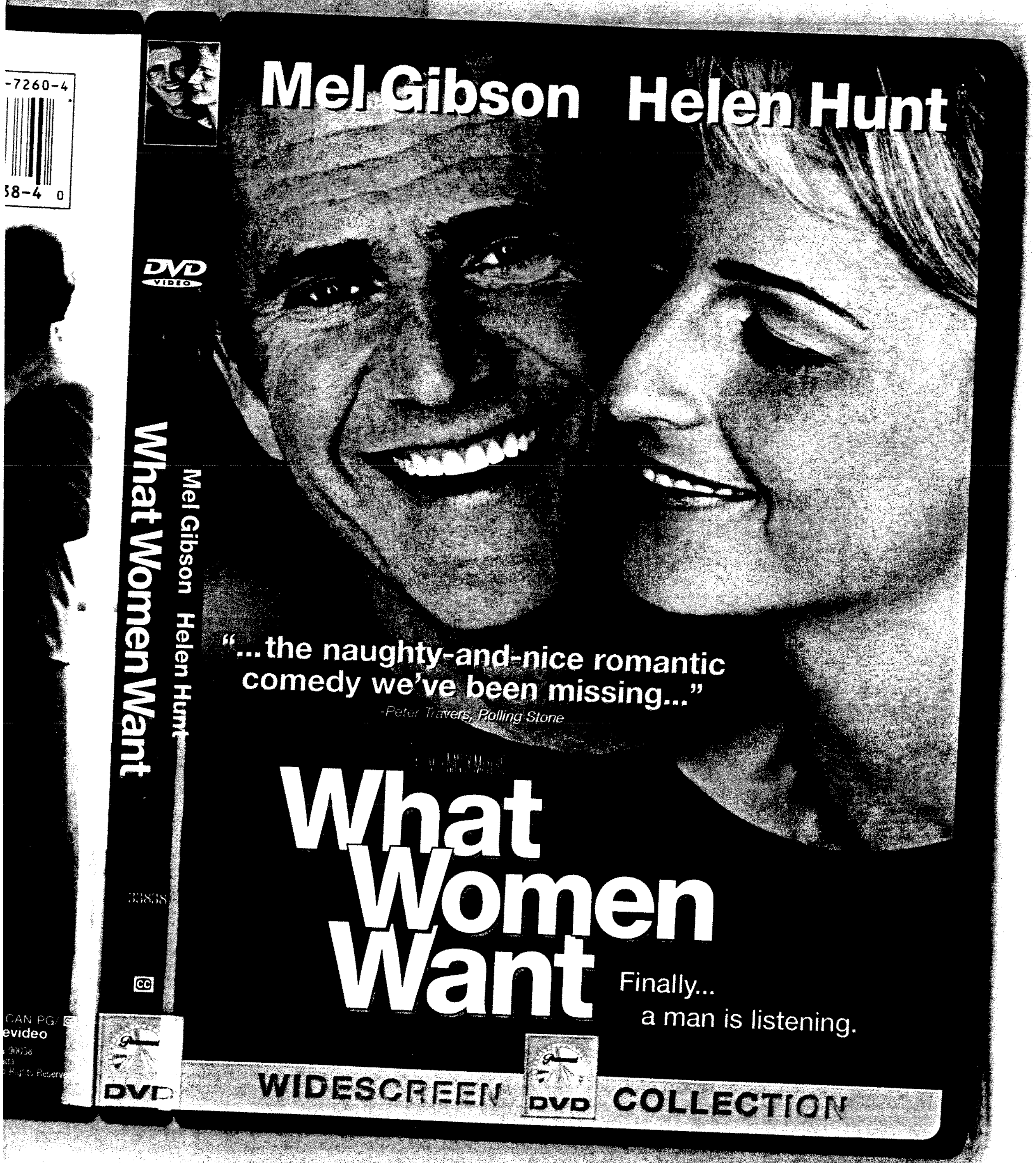
PREMIER TECHNOLOGY (PARTNERSHIP)
759 INDUSTRIAL DRIVE
BENSENVILLE, IL 60106

FOR: NON-GAMBLING, COIN-OPERATED AMUSEMENT-TYPE PINBALL MACHINES, IN CLASS 28 (U.S. CLS. 22 AND 23).

FIRST USE 2-8-1985; IN COMMERCE 2-8-1985.

SER. NO. 548,943, FILED P.R. 7-19-1985; AM. S.R. 5-19-1986.

TERESA M. RUPP, EXAMINING ATTORNEY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